

ORDINANCE NO. 46-831

AN ORDINANCE PROVIDING AMENDMENTS TO SECTION II-B.9.b, SECTION II-B.10.h AND II-B.10.i, SECTION II-B.12.l, SECTION III-B.14.b(3), SECTION III-C.4.b, SECTION III-D USE REGULATIONS SCHEDULE, SECTION III-D.6.w, SECTION III-D.6.ff AND SECTION VII-J OF THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE (April 19, 2001 EDITION), AS ADOPTED BY REFERENCE IN CITY OF WICHITA CODE SEC. 28.04.010 BY ORDINANCE NO. 44-975, DEALING WITH SEXUALLY ORIENTED BUSINESSES IN THE CITY.

WHEREAS, under the authority of K.S.A. 12-741, et seq., the City of Wichita desires to adopt amendments to the Wichita-Sedgwick County Unified Zoning Code pertaining to Sexually Oriented Businesses in the City; and

WHEREAS, by K.S.A. 12-770, the City of Wichita may adopt reasonable regulations for the gradual elimination of sexually oriented businesses in the City which constitute nonconforming uses; and

WHEREAS, the governing body of the City of Wichita finds and determines that the regulations set forth in this ordinance are reasonable regulations for the gradual elimination of sexually oriented business in the City which constitute nonconforming uses;

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA;

SECTION 1. Section II-B.9.b of the Wichita-Sedgwick County Unified Zoning Code (April 19, 2001 Edition) as adopted by reference in Code Sec. 28.04.010 by Ordinance No. 44-975, is hereby amended to read as follows:

II-B.9.b Night Club in the City means an establishment located in the City of Wichita that provides entertainment, which may include the provision of dancing by employees or patrons, and where cereal malt beverage or alcoholic liquor are offered to the public or its members, and which may or may not serve food. When the night club in the City qualifies as an Adult Entertainment Establishment under Chapter 3.05 of the Code of the City of Wichita, its uses shall be governed in this Code by the requirements for Sexually Oriented Businesses in the City.

SECTION 2. Section II-B.10.h and II-B.10.i of the Wichita-Sedgwick County Unified Zoning Code (April 19, 2001 Edition) as adopted by reference in Code Sec. 28.04.010 by Ordinance No. 44-975, is hereby amended to read as follows:

II-B.10.h Personal Care Service means an establishment primarily engaged in the provision of frequently or recurrently needed services involving the care of a person or his personal goods or apparel. Typical uses include beauty and barber shops, electrolysis studios, shoe shining and/or repair operations, tailors, and neighborhood laundry and dry cleaning operations. When the Personal Care Service establishment

qualifies as an Adult Entertainment Establishment under Chapter 3.05 of the Code of the City of Wichita, its regulation shall be governed in this Code by the requirements for Sexually Oriented Businesses in the City.

II-B.10.i Personal Improvement Service means an establishment primarily engaged in the provision of informational, instructional, personal improvement and similar services of a nonprofessional nature. Typical uses include portrait shops, photography studios, art and music schools, licensed massage therapists, health and fitness studios, swimming clubs and handicraft or hobby instruction. Personal improvement service in the County also includes tattooing and body piercing. When the Personal Improvement Service establishment qualifies as an Adult Entertainment Establishment under Chapter 3.05 of the Code of the City of Wichita, its regulation shall be governed in this Code by the requirements for Sexually Oriented Businesses in the City.

SECTION 3. Section II-B.12.1 (except Subsections (1) – (14)) of the Wichita-Sedgwick County Unified Zoning Code (April 19, 2001 Edition) as adopted by reference in Code Sec. 28.04.010 by Ordinance No. 44-975, is hereby amended to read as follows:

II-B.12.1 Sexually Oriented Business in the unincorporated areas of the County (**Sexually Oriented Business in the County**) means an adult arcade, adult bookstore, adult novelty store, adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio or sexual encounter center.

II-B.12.1-a With the exception of escort agency, all of the same establishments described in the Sec. II-B.12.1 describe a **Sexually Oriented Business in the City**.

SECTION 4. Section III-B.14.b(3) of the Wichita-Sedgwick County Unified Zoning Code (April 19, 2001 Edition) as adopted by reference in Code Sec. 28.04.010 by Ordinance No. 44-975, is hereby amended by replacing the use “Sexually oriented business, subject to Sec. III-D.6.ff” with the use “Sexually oriented business in the County, subject to Sec. III-D.6.ff.”

SECTION 5. III-C.4.b of the Wichita-Sedgwick County Unified Zoning Code (April 19, 2001 Edition) as adopted by reference in Code Sec. 28.04.010 by Ordinance No. 44-975, is hereby amended to read as follows:

III-C.4.b Use regulations. The use regulations of the underlying zoning district shall control within the OT-O district, provided however, that all uses allowed as permitted and Conditional Uses within the residential zoning districts shall also be allowed as permitted or Conditional Uses, respectively, in the OT-O district; except that tattooing and body piercing facilities and any Sexually Oriented Business in the City shall not be allowed as a permitted or a Conditional Use.

SECTION 6. Section III-D Use Regulations Schedule of the Wichita-Sedgwick County Unified Zoning Code (April 19, 2001 Edition) as adopted by reference in Code Sec. 28.04.010 by Ordinance No. 44-975, is hereby amended to add the following:

III-D Use Regulations Schedule

P = Permitted Use

C = Conditional Use

USE TYPE	ZONING DISTRICTS																conditions			
		S	S		T	M	M													
	R	F	F	S	F	F	F	B	H	O	O	R	C	W	C	P		C	B	L
COMMERCIAL																				
Sexually Oriented Business in the City															P			P	P	D.ff
Sexually Oriented Business in the County													P		P			P	P	D.ff

SECTION 7. Section III-D.6.w of the Wichita-Sedgwick County Unified Zoning Code (April 19, 2001 Edition) as adopted by reference in Code Sec. 28.04.010 by Ordinance No. 44-975, is hereby amended to read as follows:

III-D.6.w Taverns and drinking establishments, clubs and night clubs in the City.

Although listed as permitted uses in some districts, taverns, drinking establishments, clubs and night clubs in the City shall be considered Conditional Uses and subject to Sec. V-D (Conditional Use review procedures) when located within 200 feet of a church or place of worship, public park, school or residential zoning district. This distance shall be measured from the nearest lot line of the church or place of worship, public park, school or residential zoning district to the nearest lot line of the premises on which the tavern, drinking establishment, club or night club is located or of any parking lot designated to be used by the patrons of such businesses, whichever is closest. For purposes of this measurement, the required parking spaces for such a business located within a multi-tenant structure or shopping center are those located nearest the public entrance to the business. “Establishment” of any tavern, drinking establishment, club or night club business shall be deemed to include the opening of such a business as a new business, the relocation of such businesses or the conversion of an existing business location to any such business use, or any expansion of such a business beyond the existing square footage of the premises. Night clubs in the City that qualify as Sexually Oriented Businesses in the City shall be permitted uses in those districts that allow Sexually Oriented Businesses in the City, if the location of operation is no less than 500 feet from a church, school, public park, licensed day care center, the boundary of any residential district, the boundary of the OT-O district, or any other Sexually Oriented Business in the City.

SECTION 8. Section III-D.6.ff of the Wichita-Sedgwick County Unified Zoning Code (April 19, 2001 Edition) as adopted by reference in Code Sec. 28.04.010 by Ordinance No. 44-975, is hereby amended to read as follows:

III-D.6.ff Sexually oriented business.

- (1) **Sexually oriented business in the County.** Sexually oriented businesses shall be permitted in the unincorporated area of the County only when such business is properly licensed with the County pursuant to the County’s Adult Entertainment Code (Article VIII of Chapter 17 of the *Sedgwick County Code*), and only when such business is in compliance with the requirements of said Adult Entertainment Code. No sexually oriented business in the County shall be located less than 1,000 feet from a church, school, public park, residential dwelling or other adult

establishment, all as defined in the Adult Entertainment Code, subject to the amortization provisions set forth in the Adult Entertainment Code and in Sec. VII-J.1 herein.

- (2) Sexually Oriented Business in the City.** Sexually oriented businesses shall be permitted in the City only when such business is properly located pursuant to this Code and is licensed with the City pursuant to Chapter 3.05 of the Code of the City of Wichita, and only when such business is in compliance with the requirements set out in this Code and Chapter 3.05 of the Code of the City of Wichita. No sexually oriented business in the City shall be located less than 500 feet from a church, school, public park, licensed day care center, the boundary of any residential district, the boundary or the OT-O district and from any other adult establishment defined in Chapter 3.05 of the Code of the City of Wichita, subject to the amortization provisions set forth in that Chapter and in Section VII-J.2 herein.

SECTION 9. Section VII-J of the Wichita-Sedgwick County Unified Zoning Code (April 19, 2001 Edition) as adopted by reference in Code Sec. 28.04.010 by Ordinance No. 44-975, is hereby amended to read as follows:

VII-J. AMORTIZATION OF NONCONFORMITIES: Sexually Oriented Business Distance Requirements and Zoning District Limitations

1. Amortization in the County

a. No sexually oriented business in Sedgwick County shall be located less than 1,000 feet from a church; less than 1,000 feet from a school; less than 1,000 feet from a public park; less than 1,000 feet from a residential dwelling; or less than 1,000 feet from another adult entertainment establishment, regardless of licensure. The terms church, school, residential dwelling, and adult establishment shall be defined as set forth in the County's Adult Entertainment Code (Article VIII of Chapter 17 of the *Sedgwick County Code*) and any amendments thereto. This distance is to be measured from the nearest property line of the church, school, public park, residential dwelling, or other adult establishment, (regardless of licensure), to the nearest property line of the premises on which the sexually oriented business in the County is located or of any parking lot designated to be used by the patrons of such an establishment.

- (1)** Exception: Sec. VII-J.1.a above shall not apply to a sexually oriented business in the County if said sexually oriented business in the County first locates at a particular premises after June 28, 2000; and the church, school, public park, residential dwelling, or other adult establishment moves into the 1,000 foot area after the sexually oriented business in the County has commenced operations on the premises.
- (2)** Exception: A sexually oriented business may be located within 1,000 feet of a currently occupied residential dwelling provided that any currently occupied residential dwelling within 1,000 feet of the sexually oriented business in the County is separated from the sexually oriented business in the County by a roadway designated as a United States Highway.

- (3) Exception: A sexually oriented business in the County may remain at a location within 1,000 feet of a church, school, public park, residential dwelling or separate adult establishment if said sexually oriented business in the County was operating as a sexually oriented business in the County at said location on or before June 28, 2000 and held a valid adult establishment license for said location on June 28, 2000, so long as said sexually oriented business in the County is and remains properly licensed and so long as said sexually oriented business in the County has continuously operated as a sexually oriented business in the County since June 28, 2000, subject to the exceptions and limitations set forth in the County's Adult Entertainment Code.
- b. On or before June 30, 2004, all sexually oriented businesses in the County where the licensed premises are located within 1,000 feet of a church, school, public park, residential dwelling, or separate adult establishment all as defined in the County's Adult Entertainment Code, shall cease operation unless exempted pursuant to the provisions of the County's Adult Entertainment Code.

2. Amortization in the City

- a. No sexually oriented business in the City shall be located less than 500 feet from a church; less than 500 feet from a school; less than 500 feet from a public park; less than 500 feet from a licensed day care center; less than 500 feet from the boundary of a residential district; less than 500 feet from the boundary of the OT-O district; or less than 500 feet from another adult entertainment establishment, regardless of licensure. This distance is to be measured from the nearest property line of the church, school, public park, licensed day care center, residential district boundary, OT-O district boundary or other adult entertainment establishment, (regardless of licensure), to the nearest property line of the premises on which the sexually oriented business in the City is located or of any parking lot designated to be used by the patrons of such an establishment.
- (1) Exception: A Sexually Oriented Business in the City operating on or after February 8, 2005 under a valid Adult Entertainment Establishment license at a location in compliance with the distance requirements from a church, school, public park, licensed day care center or separate Adult Entertainment Establishment described in Sec. VII-J.2 of this Code shall not become nonconforming under this Code solely by reason of a church, school, public park, licensed day care center or separate Adult Entertainment Establishment moving, after February 8, 2005, to a location within the 500 foot radius of the Sexually Oriented Business after the City has issued an Adult Entertainment Establishment license for operation at the premises.
- (2) Exception: A sexually oriented business in the City may remain at a location within 500 feet of a church, school, public park, licensed day care center, residential district boundary, OT-O district boundary or separate adult entertainment establishment if said sexually oriented business in the City was operating as a sexually oriented business in the City at said location on or before February 8, 2005 and held a valid adult entertainment establishment license for said location on February 8, 2005, so long as said sexually oriented business in

the City is and remains properly licensed as an adult entertainment establishment and so long as said sexually oriented business in the City has continuously operated as a sexually oriented business in the City since February 8, 2005, subject to the exceptions and limitations set forth in Chapter 3.05 of the Code of the City of Wichita. This exception shall cease to exist, and shall no longer be effective after December 31, 2007.

- b. On or before December 31, 2007, all sexually oriented businesses where the licensed premises are located in a zoning district other than GC General Commercial, LI Limited Industrial, or GI General Industrial, or are within 500 feet of a church, school, public park, licensed day care center, residential district boundary, OT-O district boundary or separate adult entertainment establishment all as defined in Chapter 3.05 of the Code of the City of Wichita, shall cease operation unless exempted pursuant to Sec.VII-J.2. above.
- c. No provision of Sec. VII-J.2.b relating to amortization of nonconformities shall be effective against any Sexually Oriented Business in the City operating from a location made nonconforming herein until the City Attorney has filed, on behalf of the City of Wichita, an action in a court of competent jurisdiction to obtain an independent judicial review of the provisions relating to amortization of nonconformities, and has obtained a final judicial decision from that review. Such an action shall place the burden of proof on the City, shall designate the property made nonconforming by these amendments to the zoning ordinance, and include notice and an opportunity to be heard for the Sexually Oriented Business in the City that is made nonconforming by these amendments to the code.

SECTION 10. This ordinance shall be included in the Code of the City of Wichita and shall be effective upon its adoption and publication once in the official City newspaper.

PASSED AND ADOPTED by the governing body at Wichita, Kansas, this 13th day of December, 2005.

Carlos Mayans, Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

Approved as to form:

Gary E. Rebenstorf, City Attorney